



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/151020

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 31, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on September 12, 2013, at Waukesha, Wisconsin.

The issue for determination is whether petitioner was overissued FS which are subject to recovery.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Lynnae Boyenga

Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County. He had been receiving FS since approximately 2008 until his FS case closed at the end of July 2013. There is no record of a PIN change for his FS EBT card since 2008.
2. On January 21, 2013 the agency issued a notice to petitioner telling him he needed to complete a six month review form (SMRF) by February 5, 2013. Petitioner did not submit a SMRF to the agency.
3. The agency's FS issuance system continued petitioner's FS benefits despite the non-return of the SMRF. The agency issued \$200 in FS monthly to petitioner from March – July 2013.
4. On August 16, 2013 the agency issued a notice of FS overissuance to petitioner. The notice stated that the reason for the overpayment was due to the agency's error in its system which failed to close the case when no SMRF occurred. The amount of the overpayment was \$1000, for \$200 issued from March – July 2013. It also noted that \$200 was credited to the overpayment thus leaving a balance owed of \$800.

## DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Petitioner did not dispute the calculations, nor did he disagree that he did not submit a SMRF. Rather he believed by not submitting a SMRF, that his FS would end. Indeed, FS policy specifically states that an FS case will close “effective the last day of the review month at adverse action of the review month if recertification is not completed”. FS Handbook, §2.2.1.4. The agency fully admitted its error in failing to close his FS case and continue the benefits. However, as stated above, it does not matter if the overpayment is the result of agency error; the agency must still attempt to recover it.

Petitioner's argument at hearing was that he did not *use* the overpaid FS in question. He stated that after his arrest in March 2013 and he was taken into custody, his landlord seized all of his property. He had kept his FS card and PIN together in his apartment, which was part of the property removed. From there, he was unaware of where his property was placed. He stated that he filed a report of stolen property with the West Allis Police Department in April 2013. There is no evidence that he reported the stolen FS card to the FS agency.

Despite petitioner's version of events with his FS, the regulations for FS require that petitioner protect the security of his FS card and PIN.

**RECIPIENT RESPONSIBILITY.** The recipient is responsible for protecting the security of his or her EBT card and PIN. Benefits will not be replaced if they are lost or stolen after the recipient gives the card and PIN to another person. The recipient shall report a lost or stolen card or compromised PIN to recipient customer service. When the recipient reports one of these events, the EBT vendor shall immediately disable card access to the food

stamp account. The department may require that the recipient sign a card and PIN security responsibility statement prior to issuance of benefits via EBT.

Wis. Admin. Code §DHS 252.08(1). I cannot find that under these facts petitioner responsibly protected the security of his card or PIN. It is curious that he would keep his PIN with his card, especially after approximately 5 years with the same PIN. He also failed to contact the FS agency once he found out that his property was removed, or stolen as reported to the West Allis Police Department. Finally, he would have agreed to protect the security of his EBT card and PIN and report any lost or stolen EBT card or PIN with every application/review for same. See e.g., Exhibit 1. Accordingly, I find that the agency has established an overpayment that it may recover.

### **CONCLUSIONS OF LAW**

The agency correctly seeks to recover an overpayment of FoodShare that occurred because of the agency's error.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

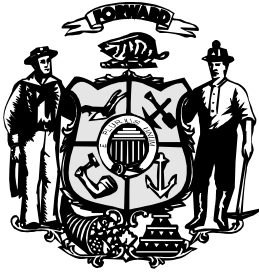
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of September, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoeft, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 16, 2013.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability